

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Breese et al.**

Serial No.: **10/062,369**

Filed: **January 31, 2002**

For: **Method and System for
Performance Reporting in a Network
Environment**

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Group Art Unit: **2145**

Examiner: **Pollack, Melvin H.**

Attorney Docket No.: **AUS920011024US1**

50170

PATENT TRADEMARK OFFICE

TRANSMITTAL DOCUMENT

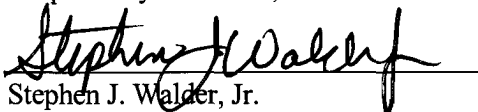
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:
ENCLOSED HEREWITH:

- Response to Notification of Non-Compliant Appeal Brief; and
- Amended Appellants' Brief (37 C.F.R. § 41.37)

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,



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ATTORNEY FOR APPELLANTS

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RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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In response to the Notice of Non-Compliant Appeal Brief dated October 23, 2006, attached is an Amended Appeal Brief addressing the issues the Examiner alleges were not adequately addressed in the originally filed Appeal Brief. Specifically, the Examiner

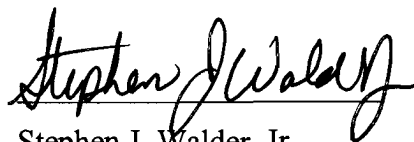
alleges that the originally filed Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal.

The Examiner stated, in an October 26, 2006 telephone conference, that the summary must contain a copy of the independent claims, even though the claims are set forth in the claims appendix of the Appeal Brief, with references to the figures and specification provided in the text of the independent claims. Appellants respectfully disagree that this is a requirement since all that is required is that the "subject matter" defined in each of the independent claims be "concisely" explained in the summary. The subject matter may be explained without having to reiterate the independent claims in the summary. Moreover, reiterating every independent claim on appeal is not a "concise" explanation. In response, the Examiner merely stated that this requirement is now policy office-wide and that he is doing as he is instructed by his supervisor.

While Appellants still assert that the Summary of Claimed Subject Matter presented in Appellants' original Appeal Brief completely satisfies all of the requirements of 37 CFR 41.37(c)(1)(v), in order to meet with the requirements established by the Examiner, the attached Amended Appeal Brief includes a Summary in which each of the independent claims is recited and reference numerals and page and line numbers are set forth for each of the features recited in the claims. Accordingly, Appellants respectfully submit that the Amended Appeal Brief satisfies all of the requirements of 37 CFR 41.37 and the requirements set forth by the Examiner.

Respectfully submitted,

DATE: October 27, 2006



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